

OGC HAS REVIEWED.

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[REDACTED]

20 June 1949

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Office of the General Counsel

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1. In bidding on Invitation [REDACTED] it is noted that the contractor has added a provision in regard to the Illinois Retailers Occupation Tax as applied to sales to Governmental bodies. Apparently, this tax applies only to shipments to points within the State of Illinois and will be billed as a separate item.

2. Normally, it would appear that any taxation of a Federal body by a State instrumentality is improper, regardless of whether it is intra-state or inter-state commerce that is affected. Where the State asserts its right to tax shipments which are wholly within the State itself, any difficulties should probably be resolved by discussion between the U. S. Government and representatives of the State. It therefore appears that the inclusion of this clause in the contract is proper provided the contractor will accept an amendment to read substantially as follows. Add the following words: "If payment of this tax is required, the Government reserves the right to request the contractor to apply for a refund of such tax from the State authorities, or to furnish satisfactory proof of the nature and payment of the tax. The Government will provide any certificates of exemption which the contractor may require in order to avoid payment of such tax."

3. It is understood that payment of the tax will most probably not be required in this case since delivery is to be made F.O.B. Chicago and this does not appear to be a "shipment to points within the State of Illinois" within the scope of the tax liability.

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cc: Subject ✓
Chrono